

TEACHERS' RETIREMENT BOARD
BENEFITS AND SERVICES COMMITTEE

SUBJECT: CAROL ST. JOHN
CONSIDERATION OF PROPOSED DECISION

ITEM NUMBER: 5

ATTACHMENT(S): 1

ACTION: X

DATE OF MEETING: June 4, 1998

INFORMATION: _____

PRESENTER(S): Ms. Olivo/Mr. Baker

Staff recommends that the Proposed Decision (PD) rendered by the Administrative Law Judge (ALJ) be rejected in its entirety, the transcript ordered for the Committee to hear the matter on the transcript at a subsequent meeting, and permit oral argument on existing transcript arguments without the taking of new evidence. The case covers two issues: 1) a Workers' Compensation (WC) offset issue; and 2) a benefit effective date issue. While the ALJ finds in the System's favor on the WC issue, it finds against it on the effective date issue. Thus, the Legal Office is recommending that the Board reject the Proposed Decision.

The ALJ concurs with the system's offsetting \$32,403 it calculated was owed to the System for a Workers' Compensation award offset and cites:

"The issue is governed by the plain language of Education Code section 24109 that states: 'Retirement allowances payable pursuant to subdivision (a) of Section 24106 shall be reduced by an amount equal to the unmodified benefits paid or payable under a workers' compensation program for the same impairment or impairments that qualify the member for a disability retirement allowance'."

The Member's Workers' Compensation Compromise and Release encompassed a claim relating to a fall May 1991 and a stress claim made June 1993. The release did not distinguish amounts for these separate claims; rather it combined the settlement amount into one dollar-amount. The ALJ concluded the member did not provide evidence showing she should only be offset the amount of the award related to stress, the basis of her STRS allowance. The ALJ concluded:

"The entire amount of disability retirement allowance payable to Respondent from the effective date of her disability shall be subject to set-off in an amount equal to the unmodified benefits paid or payable pursuant to her Workers' Compensation Compromise and Release (\$32,403.00)."

The ALJ does not concur that the System must identify the benefit effective date of Respondent/member's allowance as December 1, 1995 pursuant to the mandate governing STRS at EC section 24105. That, however, is the "first day of the month" she filed her application for benefits. He rejects the historical interpretation of the applicable statutes as denoted in a 1979 Legal advisory letter reflecting the System's incorporation of the Probate Code distinctions between "**mental incapacity**" and "**mental incompetence**." He does not accept STRS' view that **incapacity** refers to one's inability to perform his/her job while still performing one's everyday living activities; while the more serious **incompetence** specifically references someone far more impaired and unable to conduct even basic life activities. Consequently, the ALJ mistakenly identifies Respondent/member's benefit effective date as the date her disability began, October 1, 1993, rather than the date she first applied, December 1, 1995.

In pertinent part Education Code (EC) section 24102 states that a member may apply for a disability benefit if the application is made during one or more specified time periods. Subsection (b) specifically says, "While the member is physically or **mentally incapacitated**" for performance of service and the incapacity has been continuous from the last day for which compensation is payable to the member." On the other hand, EC section 24105(b)(3) specifies when a benefit effective date can be established. It states "The effective date is no earlier than either the first day of the month in which the application is received by the system's office in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the Board to have been **mentally incompetent**" (Emphasis added to both quotes.)

The System has historically made distinctions between the two questioned phrases: STRS interprets EC section 24105 as a provision applying to a member who is so severely impaired, i.e. **incompetent**, that he/she cannot care for his/herself in any manner. STRS contends section 24105 was meant to ensure that such a person, late in filing his/her application, would not be penalized because of a profoundly severe impairment that compromises all activity. On the other hand, EC section 24102 goes to a state of mind only interfering with a person's ability to teach, but does not interfere with the person's ability to conduct his/her daily activities, e.g. stress vs. schizophrenia; paranoid tendencies vs. manic-depression.

Respondent/member provided no evidence to suggest a severe level of a mental impairment. In fact, she testified she purposely delayed submitting her application pending resolution of a Workers' Compensation claim on the advice of an attorney. Such conduct indicates the individual was able to operate on a daily basis, and even tactically conduct her life. She refused to teach, retained an attorney, and purposely delayed filing a STRS disability application.

The ALJ linked two unrelated code sections and failed to distinguish the critical differences between them. One addresses the **incapacity** to perform service vis-a-vis conditions for application, submission and entitlement, while the other specifies when due to **incompetence** an effective date may be established prior to the month in which an application is received.

Therefore, the decision by the ALJ should be rejected.